

Comerica Bank-Detroit
211 West Fort Street
Detroit, Michigan 48226

RECORDATION NO. 8001-F
FILED 1425
6-036A058

Comerica Bank-Detroit
FEB 05 1986 -3 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 80012
FEB 05 1986 -3 PM
INTERSTATE COMMERCE COMMISSION
January 1986

Fee \$

20.00

Secretary
ICC Washington, D.C.
Interstate Commerce Commission
Constitution Avenue 12th Street North
Washington, D.C. 20023

DATE 2/5/86
FEE \$ 20.00
ICC Washington, D.C.

Secretary:

This letter shall serve as notification of the intent of Comerica Bank-Detroit (formerly The Detroit Bank and Trust Co.) to assign all the terms, conditions, and obligations of the Detroit and Mackinac Railway Company under the Conditional Sale Agreements dated July 25, 1975 and June 21, 1982 entered into with The Detroit Bank and Trust Co. to D.M. Leasing. D.M. Leasing is a wholly owned subsidiary of the Railway created to lease fixed assets to the Railway.

The assets financed in the above Conditional Sale Agreements are among those now being leased from D.M. Leasing by the Detroit and Mackinac Railway. Specifically, the Conditional Sale Agreement dated July 25, 1975 (I.C.C. recordation #8001) covered 50 boxcars, Serial Numbers 2200 through 2249. The Conditional Sale Agreement dated June 21, 1982 (I.C.C. recordation #13671) covered 214 boxcars, Serial Numbers 2130 through 2199 (excluding 2153, 2175, and 2185), 2200 through 2249, and 2400 through 2499 (excluding 2420, 2447, and 2470).

The attached Assignment of Lease and Security Agreement describe the appropriate assets in detail and shall serve to amend the referenced Conditional Sale Agreements assigning the Railway's interest in that Agreement to its subsidiary, D.M. Leasing.

Should you have any questions, do not hesitate to contact me.

Very truly yours

Robert C. Robinson, Vice President

Comerica Bank- Detroit

8001-8
FEB 05 1985 10 56 AM

This Assignment of Lease and Security Agreement, dated as of the 30th day of December, 19 85, by and between D.M.L., Inc. whose principal office is located at 120 Oak Street, Tawas City, MI 48763 ("Assignor"), and Comerica Bank- Detroit whose principal office is located at 211 West Fort Street, Detroit, MI 48226 ("Assignee").

Witnesseth

Whereas, Assignee has extended financial accommodations or other good and valuable consideration to Assignor; and

Whereas, Assignor, as lessor, has entered into a certain lease (the "Lease") (the original of which is attached hereto) with Detroit and Mackinac Railway Company as lessee ("Lessee"), dated January 1, 1985, which Lease provides for the lease by Assignor to Lessee of the machinery and equipment as described in the attached lease; and

Whereas Assignor desires to collaterally assign the Lease to Assignee and grant a security interest in the equipment leased thereunder to Assignee;

Now, therefore, for valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment and Grant.** To secure payment of any and all indebtedness and liabilities whatsoever of Assignor to Assignee, whether direct or indirect, absolute or contingent, due or to become due, **now existing or hereafter arising**, and howsoever evidenced, including obligations arising from applications or agreements for the issuance of letters of credit or otherwise, and to secure the performance by Assignor of its covenants, agreements, representations, and warranties hereunder (all of the foregoing indebtedness and liabilities being herein collectively called the "Indebtedness"), Assignor does hereby:

- a) sell, assign, transfer, grant and set over to Assignee all of Assignor's right, title and interest in and to the Lease and rentals and other amounts payable by Lessee thereunder, including by way of example and not of limitation, (i) Assignor's right to receive and collect rents, revenue, insurance proceeds, condemnation awards, casualty or stipulated loss payments, termination payments or premiums, purchase option payments or other moneys and security payable to or receivable by the Assignor with respect to any of the provisions of the Lease, whether as rents or as the purchase price of the Equipment (as hereinafter defined) or otherwise, (ii) all of Assignor's rights and remedies under the Lease or against any guarantors or sureties for any obligation of the lessee under the Lease, and (iii) all right, title and interest of Assignor in and to the Equipment under the Lease; and
- b) grant to Assignee a security interest in the equipment described in the Lease and in all additions, attachments, accessions, parts, replacements, substitutions, renewals and cash and non-cash proceeds thereof or therefor, wherever situated, now owned or hereafter acquired (collectively the "Equipment").

This Assignment and Security Agreement is made solely as collateral security for the Indebtedness and the execution and delivery hereof shall not impair or diminish the obligations of the Assignor under the Lease or as owner of the Equipment, nor shall any of the obligations contained in the Lease be imposed upon the Assignee, and Assignor shall remain obligated to perform each and every obligation required of it under the Lease. Upon payment in full of the Indebtedness and all other sums payable thereunder or hereunder, and upon the expiration of any commitment or other obligation to provide financial accommodations of the Assignee to the Assignor or to any other person given on the security of this Assignment and Security Agreement, this Assignment and Security Agreement shall terminate and all rights and interests herein assigned and granted to the Assignee shall revert to the Assignor.

2. **Representations and Warranties of Assignor.** The Assignor represents and warrants to the Assignee that:

- a) The sole original copy of the Lease has been delivered herewith to Assignee;
- b) The Lease is genuine, enforceable and in full force and effect according to its terms; is not in default (nor has there occurred any event which with the giving of notice or the passage of time, or both, would constitute such a default), and is the only lease or agreement executed by Assignor and Lessee with respect to the Equipment;
- c) Assignor has title to the Equipment and the Lease (herein collectively referred to as the "Collateral") free and clear of all liens, encumbrances and security interests, excepting only the rights of Lessee under the Lease and liens, encumbrances and security interests in favor of Assignee, and Assignor has not executed, made or granted any other assignment or security interest of or in the Lease, the Equipment or other rights, interest or property the subject matter of the assignment and security interest hereby made and granted;
- d) The Equipment has been delivered to, and accepted by, Lessee in condition satisfactory to Lessee;
- e) The Lease constitutes the only agreement between Assignor and Lessee with respect to the Equipment and there are no other agreements or understandings whatsoever, oral or written, between Assignor and Lessee in any way relating to the Lease or the Equipment, other than those written agreements or instruments, if any, delivered by Assignor to Assignee, and acknowledged by the Assignee to have been received at the time of the execution of this Assignment and Security Agreement; and
- f) All items constituting a part of the Equipment which are fixtures under applicable law or which are in fact attached to real estate are described in Schedule A (if any) annexed hereto (and the failure by Assignor to attach a Schedule A to this Assignment and Security Agreement shall constitute a warranty and representation by Assignor that none of the Equipment is a fixture and that none of the Equipment is attached to real estate), and there is likewise set forth in Schedule A (if any) a description of the real estate upon which all such items are located and the name(s) and address(es) of the owner(s) and mortgagee(s) thereof. Assignor, upon demand of Assignee, shall furnish Assignee with consents or disclaimers filed by all persons having an interest in the real estate (including owners, mortgagees and lessees) consenting to Assignee's security interest and acknowledging Assignee's priority or disclaiming any interest in the Equipment. Assignor shall promptly notify Assignee of any after acquired Equipment which may be or become fixtures under applicable law.

3. Covenants and Agreements of Assignor. The Assignor covenants and agrees that it will, while this Assignment and Security Agreement is in effect:

- a) Keep the Collateral free at all times from any and all liens, security interests and encumbrances, excepting only the rights of Lessee under the Lease and liens, encumbrances and security interests in favor of Assignee;
- b) Not make any other sale, lease or assignment of the Collateral, and any such sale, lease or assignment shall be void;
- c) Not enter into any agreement subordinating, amending, modifying or terminating the Lease without the prior written consent of Assignee, and any such attempted subordination, amendment, modification or termination shall be void;
- d) Permit the Assignee to examine, inspect and copy any of Assignor's books and records relating to the Collateral or otherwise and, to the extent provided under the Lease, any of Lessee's books and records;
- e) To the extent provided under the Lease, permit the Assignee to inspect the Equipment and enter upon any and all premises where the Equipment is kept or might be located;
- f) Designate the Assignee to receive all rents and other payments of every kind and nature, all notices, demands, documents and other communications and all tenders and all security relating to the Lease and the Equipment, which the Lessee is required or permitted to give, make, pay or deliver to or serve upon the Assignor under the Lease;
- g) Inform Assignee of any knowledge Assignor may have of any failure by Lessee to perform any or all obligations, covenants and agreements under the Lease, or of any default thereunder, or any event which, with the passage of time or the giving of notice, or both, would constitute such a default;
- h) Except to the extent performed by Lessee under the Lease, keep the Equipment in good condition and repair and safeguard and protect the same from loss, damage or deterioration from any cause whatsoever (other than reasonable wear and tear from normal use) and insure the Equipment against all risks of loss and physical damage with such insurance companies, in such amounts, and with such loss payable clauses as Assignee shall from time to time require, and to deposit such insurance policies or certificates thereof with Assignee, and, if Lessee or Assignor fails to maintain satisfactory insurance, Assignee shall have the option to do so and Assignor agrees to repay all amounts so expended by Assignee immediately upon demand, together with interest at the highest rate charged by Assignee on any indebtedness, or part thereof;
- i) Except to the extent performed by Lessee under the Lease, collect, prepare and file all tax returns necessary or advisable and pay promptly and within the time they can be paid without interest or penalty all taxes, assessments and similar imposts and charges with respect to the Collateral which are now, or hereafter may become, a lien, charge or encumbrance upon the Collateral, except to the extent contested in good faith and bonded or secured satisfactorily to Assignee, and, if Lessee or Assignor fails to pay any such taxes, assessments or other charges as they become due, Assignee shall have the option to do so and Assignor agrees to repay all amounts so expended by Assignee immediately upon demand, together with interest at the highest rate charged by Assignee on any indebtedness or part thereof;
- j) Cooperate with Assignee in any claim, action, lawsuit, repossession or other proceeding which Assignee wishes to undertake in the name of Assignor or Assignee against Lessee or any other person with respect to the Collateral;
- k) Do all acts and things, execute all writings and seek all waivers, disclaimers and consents requested by the Assignee to establish, maintain and continue perfected and prior to the first security interest of Assignee in the Collateral, and pay on demand all costs and expenses of filing and recording the aforesaid, including the costs of any record searches deemed necessary by Assignee to establish and determine the validity and priority of Assignee's security interest;
- l) Fulfill and comply with all its warranties, representations, agreements and obligations under the Lease;
- m) Except to the extent performed by Lessee under the Lease, defend and hold harmless Assignee from and against any claim, cause of action, damages, liability, cost or expense which may arise or be incurred in any manner in favor of any person relating to the Collateral and the construction, purchase, delivery, installation, ownership, sale, lease, use, maintenance, repair, operation or condition thereof;
- n) With respect to any vehicle constituting a part of the Equipment, Assignor will take all steps necessary to effect upon the certificate of title to any such vehicle an indication of the security interest of Assignee therein; and
- o) Assignor will reimburse Assignee for all expenses, including reasonable attorney fees and legal expenses incurred by Assignee in seeking to collect the Indebtedness or any part thereof, in defending the priority of Assignee's security interest or in pursuing any of its rights or remedies hereunder.

4. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

- a) Any failure or neglect to comply with, or breach of, any of the terms, provisions, warranties or covenants of this Agreement, or any other agreement or commitment between the Assignor or any guarantor and the Assignee; or
- b) Any failure to pay the Indebtedness when due, or such portion thereof as may be due, by acceleration or otherwise; or
- c) If the Equipment or any part thereof ceases to be personal property unless herein shown to the contrary; or
- d) Any warranty, representation, financial statement or other information made, given or furnished to Assignee by or on behalf of Assignor or any guarantor shall be, or shall prove to have been, false or materially misleading when so made, given, or furnished; or
- e) Any loss, theft, substantial damage or destruction to or of any of the Collateral or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection therewith or of any other judicial process of, upon or in respect of Assignor or any guarantor or any of the Equipment; or

- f) Sale or other disposition by Assignor of any substantial portion of its assets or property, or death, dissolution, termination of existence, insolvency, business failure, or assignment for the benefit of creditors of or by Assignor or any guarantor or commencement of any proceedings under any State or Federal bankruptcy or insolvency laws or laws for the relief of debtors by or against Assignor or any guarantor; or the appointment of a receiver, trustee, court appointee, sequester, or otherwise, for all or any part of the property of Assignor or any guarantor; or
- g) Assignee deems the margin of Collateral insufficient or itself insecure, in good faith believing that the prospect of payment of the Indebtedness or performance of this Agreement is impaired or shall fear deterioration, removal or waste of the Collateral; or
- h) Lessee defaults in the due observance or performance of any covenant, warranty, representation, condition or provision contained in the Lease.

5. Remedies, Enforcement, and Application of Proceeds.

- a) Upon the occurrence of any Event of Default, Assignee may at its discretion and without prior notice to Assignor declare any or all of the Indebtedness to be immediately due and payable, and shall have and may exercise any one or more of the following rights and remedies:
 - (i) exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code and other applicable law;
 - (ii) institute legal proceedings to foreclose upon and against the lien and security interest granted by this Agreement, to recover judgment for all amounts then due and owing as Indebtedness secured hereby, and to collect the same out of any of the Collateral or proceeds of any sale thereof;
 - (iii) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all of the Equipment or the Lease;
 - (iv) exercise all rights and remedies of Assignor, as lessor, under the Lease; and
 - (v) personally or by agents or attorneys, enter upon any premises where the Collateral or any part thereof may then be located, and take possession of all or any part thereof and/or render it unusable, and without being responsible for loss or damage to such Collateral,

1. hold, store and keep idle, or lease, operate, remove or otherwise use or permit the use of, the Collateral or any part thereof, for such time and upon such terms as Assignee may in its sole and complete discretion deem to be in its own best interest, and demand, collect and retain all hire earnings and other sums due and to become due in respect of the same from any party whomsoever, accounting only for net earnings, if any (unless the Collateral is retained in satisfaction of the Indebtedness, in which case no accounting will be necessary) arising from such use (which net earnings may be applied against the Indebtedness) and charging against all receipts from the use of the same or from the sale thereof, by court proceedings or pursuant to subparagraph (2) below, all other costs, expenses, charges, damages and other losses resulting from such use;

2. sell, lease or dispose of, or cause to be sold, leased or disposed of, all or any part of the Collateral at one or more public or private sales, leaseings or other dispositions, at such places and times and on such terms and conditions as Assignee may deem fit, without any previous demand or advertisement but with reasonable notification to Assignor of any such sale, lease or other disposal, and except as herein provided, all notice of sale, lease or other disposition, and advertisement, and other notice or demand, any right to equity of redemption and any obligation of a prospective purchaser or lessee to inquire as to the power and authority of Assignee to sell, lease or otherwise dispose of the Collateral or as to the application by Assignee of the proceeds of sale or otherwise, which would otherwise be required by, or available to Assignor under applicable law are hereby expressly waived by Assignor to the fullest extent permitted by such law.

At any sale pursuant to this Paragraph 5, whether under the power of sale or by virtue of judicial proceedings, it shall not be necessary for Assignee or a public officer under order of a court to have present physical or constructive possession of the Collateral to be sold. The recitals contained in any conveyances and receipts made and given by Assignee or such public officer to any purchaser at any sale made pursuant to this Agreement shall, to the extent permitted by applicable law, conclusively establish the truth and accuracy of the matters therein stated (including, without limiting the generality of the foregoing, the amounts of the principal of and interest on the Indebtedness, the accrual and non-payment thereof and advertisement and conduct of such sale in the manner provided herein and by applicable law); and all prerequisites to such sale shall be presumed to have been satisfied and performed. Upon any sale hereunder of any of the Collateral or any interest therein, the receipt of the officer making such sale under judicial proceedings or of Assignee shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obligated to see the application thereof. Any sale hereunder of the Collateral or any interest therein shall forever be a perpetual bar against Assignor with respect to such Collateral.

- b) The rights and remedies of the Assignee, and any lessee of the Equipment from Assignee, shall be subject to the right, if any, of the Lessee under the Lease to the quiet enjoyment and use of the Equipment, but only for so long as the Lessee shall not be in default in the due observance or performance of any covenant, warranty, representation, condition or provision contained in the Lease.
- c) The proceeds of any sale or other disposition of Collateral authorized by this Agreement shall be applied by Assignee first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorney fees and legal expenses incurred by Assignee; the balance of the proceeds of such sale or other disposition shall be applied in the payment of the Indebtedness, first to interest, then to principal, and the surplus, if any, shall be paid over to Assignor or to such other person or persons as may be entitled thereto under applicable law. Assignor shall remain liable for any deficiency which it shall pay to Assignee immediately upon demand.
- d) Nothing herein contained is intended, nor should it be construed, to preclude Assignee from pursuing any other remedy provided by law for the collection of the Indebtedness or any portion thereof, or for the recovery of any other sum to which Assignee may be or become entitled for the breach of this Agreement by Assignor, nor shall anything contained herein reduce in any way any rights of Assignee contained in any existing agreement between Assignor and Assignee.
- e) No waiver of default shall be effective unless in writing signed by an officer of Assignee, and no waiver of default or forbearance on the part of Assignee in enforcing any of its rights under this Assignment and Security Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any such right.
- f) Assignor hereby irrevocably appoints (which appointment is coupled with an interest) Assignee the true and lawful attorney of Assignor (with full power of substitution) and in the name, place and stead of, and at the expense of, Assignor:
 - (i) to give any necessary receipts or acquittances for amounts collected or received hereunder;
 - (ii) to make all necessary transfers of all or any part of the Collateral in connection with any sale, lease or other disposition made pursuant hereto;

(iii) to execute and deliver for value all necessary or appropriate bills of sale, assignment and other instruments in connection with any such sale, lease or other disposition, Assignor hereby ratifying and confirming all that its said attorney (or any substitute) shall lawfully do hereunder and pursuant hereto. Nevertheless, if so requested by Assignee or a purchaser or lessee, Assignor shall ratify and confirm any sale, lease or other disposition by executing and delivering to Assignee or such purchaser or lessee all proper bills of sale, assignments, releases, leases and other instruments as may be designated in any such request; and

(iv) to execute and file in the name of and on behalf of Assignor all financing statements or other filings deemed necessary or desirable by Assignee to evidence or perfect the security interests herein granted.

g) Assignor also agrees, upon request of Assignee, to assemble the Collateral and make it available to Assignee at any place designated by Assignee which is reasonably convenient to Assignee and Assignor.

6. Miscellaneous.

a) Assignor agrees that Assignee may, in Assignor's name endorse all notes or remittances received from Lessee and to do any and all other things necessary in order to reduce the same to money, and without notice to Assignor, and without affecting Assignor's liability in any manner whatsoever, Assignee may waive or release any and all rights against Lessee and grant extensions of time or payment to Lessee.

b) If any term or provision of this Assignment and Security Agreement or any application thereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Assignment and Security Agreement and of any other application of such term or provision shall not in any way be affected or impaired thereby.

c) This Assignment and Security Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of Michigan.

d) This Assignment and Security Agreement shall be terminated only by the filing of a Termination Statement in accordance with the applicable provisions of the Uniform Commercial Code. Until terminated, the security interest hereby created shall continue in full force and effect and shall secure and be applicable to all advances now or hereafter made by Assignee to Assignor whether or not Assignor is indebted to Assignee immediately prior to the time of any such advance.

e) This Assignment and Security Agreement and all the rights and remedies of Assignee herein shall inure to the benefit of Assignee's successors and assigns and to any other holder who derives from Assignee title to or an interest in the Indebtedness or any portion thereof, and shall bind Assignor and the heirs, legal representatives, successors and assigns of Assignor.

f) The phrase "Uniform Commercial Code" means Act Number 174 of the Michigan Public Acts of 1962, as amended. Except as otherwise herein provided, the terms used in this Assignment and Security Agreement shall have the meaning assigned to them in Article 9 (or, absent definition in Article 9, in any other Article of the Uniform Commercial Code).

g) If there is more than one Assignor, all undertakings, warranties and covenants made by Assignor and all rights, powers and authorities given to or conferred upon Assignee shall be made or given jointly and severally.

h) Notwithstanding the security interest described herein, any indebtedness owing from Assignee to Assignor can be set off and applied by Assignee on any Indebtedness at any time and from time to time either before or after maturity or demand upon or notice to anyone.

i) In the event that any mandatory requirement of applicable law shall obligate Assignee to give prior notice to Assignor of any action to be taken hereunder, Assignor hereby agrees that a written notice given at least five days before the date of any such act, shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time after which any private sale, lease or other disposition intended to be made hereunder is to be made, unless a shorter notice period is reasonable under the circumstances. A notice shall be deemed to be given hereunder when delivered to Assignor or when placed in an envelope addressed to Assignor and deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States Postal Service. The mailing shall be registered, certified or first class mail.

j) Assignor and Assignee hereby irrevocably waive the right to trial by jury with respect to any and all actions or proceedings at any time in which Assignor and Assignee are parties whether such actions or proceedings arise out of this Assignment and Security Agreement or otherwise.

k) A carbon, photographic or other reproduction of this Assignment and Security Agreement shall be sufficient as a financing statement under the Uniform Commercial Code and may be filed by Assignee as such in any filing office.

7. Statement of Business Name, Residence and Location of Equipment.

Assignor warrants, covenants and agrees as follows:

a) Assignor's chief executive office (or, if only one, Assignor's place of business) is located in the County of Iosco, State of Michigan. The mailing address is: 120 Oak Street, Tawas City, 48763.
Number and Street City Zip Code

b) If Assignor is an individual or sole proprietor, Assignor's residence (if any) is located in the County of _____, State of _____. The mailing address is: _____, _____, _____.
Number and Street City Zip Code

c) If not already indicated above, any other places of business and/or residences of Assignor are indicated below:

- d) Until Assignee is advised in writing by Assignor to the contrary, all notices, requests and demands required hereunder or by law shall be given to, or made upon Assignor at the address indicated in Paragraph (a) or Paragraph (b).
- e) The equipment will be kept at the address of Lessee as indicated below:
120 Oak Street, Tawas City, MI (equipment is boxcars which travel throughout the U.S.).
- f) Assignor will give Assignee prompt written notice of any change in Assignor's or Lessee's name, identity or corporate structure and/or any of the above addresses.
8. **Special Provisions applicable to this Agreement.** This Assignment of Lease and Security Agreement covers only that equipment financed in the Conditional Sale Agreement dated July 21, 1975 (I.C.C. #8001) and shall serve to amend the Conditional Sale Agreement specifically:
- (1) Fifty (50) Pullman-Standard boxcars, built 5/75. Series Numbers 2200 up to and including 2249.

In Witness Whereof, Assignor and Assignee have caused this Assignment and Security Agreement to be duly executed as of the date and year first above written, at _____, Michigan.

Witness:

Mary Jo Wilcox
Mary Jo Wilcox
Shirley R. Luedtke
Shirley R. Luedtke

D.M.L., INC. (Assignor)

By Charles A. Pinkerton, III
Charles A. Pinkerton, III
Its President

Witness:

Mary Jo Wilcox
Mary Jo Wilcox
Shirley R. Luedtke
Shirley R. Luedtke

By R. C. Moffatt
Roger C. Moffatt
Its Executive Vice President

Comerica Bank- DETROIT
(Assignee)

Witness:

Marguerite Harrington
Marguerite Harrington
Barbara Grossett
Barbara Grossett

By Robert C. Robinson
Robert C. Robinson
Its Vice President

Subscribed and sworn to before me this 3rd day of February, 1986, personally appeared Charles A. Pinkerton III and Roger C. Moffatt known to me to be the President and Executive Vice President of D.M.L., Inc.

Shirley R. Luedtke
SHIRLEY R. LOEDTKE
Notary Public, Iosco County, MI
My Commission Expires Mar. 21, 1989